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June 9, 2011

## VIA ECFS

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-B204  
Washington, D.C. 20554

**Re: Possible Elimination or Revision of Rules  
Under the Regulatory Flexibility Act, 5 U.S.C. 610  
CB Docket No. 09-229**

Dear Ms. Dortch:

I write in reference to the Commission's Public Notice released March 3, 2011 ("Notice") in the above-captioned proceeding.<sup>1</sup> Specifically, this letter provides comment on the possible revision of 47 C.F.R. § 54.307(c), governing the submission of line count filings for purposes of receiving high-cost support from the federal Universal Service Fund. This rule section imposes unnecessary burdens on ETCs. As counsel for numerous competitive eligible telecommunications carriers, I propose changes in the rule to reduce these burdens as set forth below.

Currently, Section 54.307(c) reads as follows:

*(c) A competitive eligible telecommunications carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule.*

*(1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year; (2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year; (3) No later than December 30th of each year, submit data as of June 30th of the existing calendar year; (4) No later than March 30th of each year, submit data as of September 30th of the*

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<sup>1</sup> *FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under the Regulatory Flexibility Act, 5 U.S.C. 610*, Public Notice, DA 11-412 (March 3, 2011).

*previous calendar year.*

In its current form, and as currently implemented, Section 307(c) is unduly rigid. By tying the receipt of high-cost support to a set of quarterly filing deadlines, the rule is punitive for any ETC that misses one of the deadlines. If a filing is even a single day late, the carrier must forgo an entire calendar quarter's worth of support, unless a waiver can be secured. Such waivers are not routinely granted, and a carrier typically must wait over a year for a decision. In the meantime, the carrier must find a way to service its loan obligations, operate its USF-supported network, and meet ETC build-out commitments made to state commissions.

Moreover, the case law on USF waivers has been ambiguous, inconsistent, and unfairly discriminatory toward competitive ETCs. By my informal count, of 63 petitions for waiver of USF filing deadlines filed by or on behalf of wireless ETCs, 28 petitions, or 44.4% percent, have been denied or partially denied. Meanwhile, of 33 petitions filed by or on behalf of incumbent LECs, just *one* has been denied. Competitive ETCs must wait longer for Commission action, too: the average waiver processing time for competitive ETCs is 511 days compared to the average incumbent LEC waiver processing time of 377 days. It goes without saying that the litigating and processing of a total of at least 96 waiver petitions (with many more currently pending) represents untold dollars in administrative and legal expenses.

To alleviate this burden on competitive ETCs and on the system in general, Section 54.307(c) should be revised to avoid such unfair disruptions, while providing appropriate incentives for carriers to make timely filings. Specifically, a carrier that misses a line count filing should have its support for the applicable quarter reduced by a percentage that increases with the amount of time by which the filing is overdue:

- If the filing is submitted within 30 days after the deadline, the carrier's support should be reduced by 5%.
- If it is submitted between 30 and 60 days after the deadline, the carrier's support should be reduced by 10%.
- If it is submitted between 60 and 90 days after the deadline, there should be a 15% reduction.
- Finally, if the carrier fails to make the submission by the next quarterly filing deadline, the support should be withheld altogether unless and until the carrier obtains a waiver from the Commission.

A graded support reduction schedule such as the one proposed above would ensure that carriers will continue to receive a substantial portion of their support, allowing them to build out their networks and fulfill their various ETC commitments. At the same time, because the proposal would deprive carriers of a significant portion of their anticipated support, it would provide carriers with a strong incentive to file on time. Meanwhile, the Commission as well as carriers will experience enormous cost savings because there would be far fewer requests for waivers of high-cost filing deadlines.

Such a reduction schedule would also benefit the Commission's new broadband initiatives, because all support deducted from carriers under the revised rule would be repurposed for new programs. Thus, any time a carrier misses a line count deadline, the funding reserved for those initiatives would increase.

The proposed revised rule follows below:

*(c) A competitive eligible telecommunications carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule.*

*(1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year; (2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year; (3) No later than December 30th of each year, submit data as of June 30th of the existing calendar year; (4) No later than March 30th of each year, submit data as of September 30th of the previous calendar year.*


*If the filing is submitted within 30 days after the deadline, the carrier's support for the quarter shall be reduced by 5%. If the filing is submitted between 30 and 60 days after the deadline, the carrier's support shall be reduced by 10%. If the filing is submitted between 60 and 90 days after the deadline, the carrier's support shall be reduced by 15%. If the carrier fails to make the line count submission by the next quarterly filing deadline, the support shall be reduced by 100%.*

#### Conclusion

The rule revision proposed above would appropriately balance the need to ensure timely filings against the need to promote competitive neutrality and promote the Commission's universal service objectives by ensuring the continued receipt of support. At the same time, it would advance the Commission's broadband initiatives by making additional support available for repurposing.

I appreciate the opportunity to present this proposed rule revision. Should any questions arise, please do not hesitate to contact me.

Sincerely,



Steven Chernoff

cc: Sharon Gillett  
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